

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 210

**Introduced by Senator Hancock
(Principal coauthor: Senator Liu)**

February 8, 2011

An act to amend ~~Section 3417~~ Sections 1270, 1275, and 1318.1 of the Penal Code, relating to ~~prisoners~~ criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as amended, Hancock. ~~Prisoners: community treatment program.~~ Criminal procedure: release on defendant's own recognizance.

(1) Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her own recognizance unless the court finds that the release will compromise public safety or will not reasonably ensure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.

This bill would authorize a court to determine, in any case that is before a court upon an accusatory pleading concerning the commission of a felony punishable by imprisonment in a county jail, whether the defendant may be released on his or her own recognizance. In making this decision, the bill would require the court to determine whether the release will compromise public safety. The bill would require the court to specify whatever reasonable conditions the court finds appropriate to ensure the appearance of the defendant, and would authorize the court to release the defendant on his or her own recognizance subject

to those conditions. The bill would set forth certain conditions that the court may specify, including, but not limited to, prohibiting contact with alleged victims or potential witnesses, or home detention, with or without electronic monitoring. The bill, if release will compromise public safety or will not reasonably ensure the appearance of the defendant, would require the court to state the reasons for the finding and set bail.

(2) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or a hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

(3) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being

interviewed about the facts and circumstances of the defendant's current offense, and would limit the use and availability of the information in the report. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

(4) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

~~Existing law requires the Department of Corrections and Rehabilitation to establish and implement a community treatment program, under which a women sentenced to state prison who has one or more children under 6 years of age, whose child is born prior to incarceration, or who is pregnant, shall be eligible for release with her children to a public or private facility in the community suitable to their needs. Existing law requires the department to deny placement in the community treatment program, except as provided, to certain women including, but not limited to, those who have been convicted of the unlawful sale or possession for sale, manufacture, or transportation of a controlled substance, as defined, if large-scale and for profit, as defined by the department.~~

~~This bill would exclude women from denial of placement in the program who are convicted of planting, cultivating, harvesting, drying, or processing any marijuana or any part thereof, and persons who are convicted of possessing for sale any marijuana.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

1 (a) Pretrial custody reform is urgently needed in California,
2 where the pretrial population far exceeds the national average of
3 61 percent. More than 71 percent of the 71,000 Californians held
4 in county jails statewide on any given day are awaiting trial.

5 (b) Pretrial custody reform will support the implementation of
6 public safety realignment by providing counties greater flexibility
7 in managing their pretrial populations using best practices
8 developed over many years across many jurisdictions.

9 (c) Pretrial services programs have been successfully
10 implemented in many jurisdictions, and have helped to reduce the
11 pretrial jail populations, save money, reduce recidivism, and
12 protect the public.

13 (d) Increasing the use of evidence-based practices in pretrial
14 population management programs will allow better empirical
15 analysis in pretrial decisions, and will help to ensure that the
16 court's decision to order release, conditions of release, and bail
17 is based on a credible assessment of the defendant's risk to public
18 safety and the likelihood of appearance as required.

19 (e) In order for pretrial programs to function properly and to
20 protect the rights of persons submitting sensitive information, it
21 is essential to treat pretrial investigation reports as confidential
22 so the reports are used only for release, bail, and monitoring
23 considerations.

24 SEC. 2. Section 1270 of the Penal Code is amended to read:

25 1270. (a) Any person who has been arrested for, or charged
26 with, an offense other than a capital offense may be released on
27 his or her own recognizance by a ~~court~~ judge or magistrate who
28 could release a defendant from custody upon the defendant giving
29 bail, including a defendant arrested upon an out-of-county warrant.
30 A defendant who is in custody and is arraigned on a complaint
31 alleging an offense ~~which~~ *that* is a misdemeanor, and a defendant
32 who appears before a ~~court~~ judge or magistrate upon an
33 out-of-county warrant arising out of a case involving only
34 misdemeanors, shall be entitled to an own recognizance release
35 unless the court makes a finding on the record, in accordance with
36 Section 1275, that an own recognizance release will compromise
37 public safety or will not reasonably ~~assure~~ *ensure* the appearance
38 of the defendant as required. Public safety shall be the primary
39 consideration. If the court makes one of ~~those~~ *the* findings, ~~the~~
40 *authorized by this subdivision, the court shall then set bail and*

1 specify the conditions, if any, whereunder the defendant shall be
2 released.

3 *(b) The court shall determine whether a defendant who is*
4 *charged with a felony, the sentence for which may be served in a*
5 *county jail pursuant to subdivision (h) of Section 1170, is eligible*
6 *for release on his or her own recognizance and to be ordered to*
7 *appear, as required. Public safety shall be the primary*
8 *consideration in this determination. In granting an own*
9 *recognizance release, a court may consider imposing any of the*
10 *following conditions or any other reasonable condition that the*
11 *court deems appropriate to ensure public safety and to ensure the*
12 *defendant's appearance, as required:*

13 *(1) Mandatory reporting to the county, a designated law*
14 *enforcement agency, county probation department, or other local*
15 *governmental agency.*

16 *(2) Prohibiting contact with alleged victims or potential*
17 *witnesses who may testify concerning the offense.*

18 *(3) Restricting locations, places of abode, and travel.*

19 *(4) Specifying curfew.*

20 *(5) Restricting consumption of alcohol.*

21 *(6) Requiring restraint from any illegal use of a controlled*
22 *substance, as defined in Division 10 (commencing with Section*
23 *11000) of the Health and Safety Code.*

24 *(7) Home detention, with or without electronic monitoring.*

25 *(c) If the court finds that the imposition of one or more of the*
26 *conditions specified in subdivision (b), or any other reasonable*
27 *condition the court deems appropriate, would reasonably ensure*
28 *the defendant's appearance, as required, and the defendant's*
29 *release would not compromise public safety, the court may specify*
30 *the conditions that the court deems appropriate under which to*
31 *release the defendant on his or her own recognizance.*

32 *(d) If the judge or magistrate makes a finding that release*
33 *pursuant to subdivision (b) will compromise public safety or will*
34 *not reasonably ensure the appearance of the defendant, as*
35 *required, the court shall state on the record the reasons for that*
36 *finding and shall then set bail as is reasonably necessary to ensure*
37 *the appearance of the defendant. A judge or magistrate may set*
38 *bail in an amount less than what is specified in the county bail*
39 *schedule, where he or she determines that the amount specified in*
40 *the county bail schedule is higher than necessary to reasonably*

1 *ensure the appearance of the defendant. In making this*
2 *determination, the court may consider information included in a*
3 *pretrial services report, prepared in accordance with Section*
4 *1318.1, if one is available.*

5 ~~(b)~~

6 *(e) Article 9 (commencing with Section 1318) shall apply to*
7 *any person who is released pursuant to this section.*

8 *SEC. 3. Section 1275 of the Penal Code is amended to read:*

9 *1275. (a) In determining conditions for pretrial release, and*
10 *in setting, reducing, or denying bail, the judge or magistrate shall*
11 *shall, on the available information, take into consideration the*
12 *protection of the public, the seriousness nature and circumstances*
13 *of the offense charged, the history and characteristics of the*
14 *defendant, the previous criminal record of the defendant, including*
15 *whether the defendant was, at the time of arrest for the charged*
16 *offense, on probation, parole, or other form of release pending*
17 *trial, sentencing, or appeal, and the probability of his or her*
18 *appearing at trial or hearing of the case. The public, including the*
19 *defendant's record of appearance at past court hearings or flight*
20 *to avoid arrest or prosecution. Public safety shall be the primary*
21 *consideration.*

22 *(b) In considering the history and characteristics of the*
23 *defendant, the judge or magistrate may consider any of the*
24 *following:*

25 *(1) The ties of the defendant to the community, including his or*
26 *her employment, the duration of his or her residence, and the*
27 *defendant's family attachments.*

28 *(2) The defendant's current educational or vocational program*
29 *enrollment and participation.*

30 *(3) The physical and mental condition of the defendant and the*
31 *defendant's history related to dependence on alcohol or controlled*
32 *substances, including past and current participation in substance*
33 *abuse programs and counseling.*

34 *(c) In considering the seriousness nature and circumstances of*
35 *the offense charged, the judge or magistrate shall include*
36 *consideration of the seriousness of the offense, the alleged injury*
37 *to the victim, and alleged threats to the victim or a witness to the*
38 *crime charged, and the alleged use of a firearm or other deadly*
39 *weapon in the commission of the crime charged, and the alleged*
40 *use or possession of controlled substances by the defendant.*

(b)

(d) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider both the following: ~~(1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.~~

(1) *The amounts of controlled substances alleged to be involved in the commission of the offense.*

(2) *Whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.*

(e)

(e) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, “unusual circumstances” ~~does not include~~ *shall not solely be based on* the fact that the defendant has made all prior court appearances or has not committed any new offenses.

SEC. 4. *Section 1318.1 of the Penal Code is amended to read:*

1318.1. (a) A court, *sheriff, county probation department, or other local governmental agency*, with the concurrence of the board of supervisors, may employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance.

(b) Whenever a court, *sheriff, county probation department, or other local governmental agency* has employed an investigative staff pursuant to subdivision (a), ~~an investigative report shall be prepared in all cases before a court may order a defendant released on his or her own recognizance in any case~~ involving a violent felony, as described in subdivision (c) of Section 667.5, or a felony in violation of subdivision (a) of Section 23153 of the Vehicle Code, *a pretrial investigation report shall be prepared* recommending whether the defendant should be released on his

1 or her own recognizance. The report shall include all of the
2 following:

3 (1) Written verification of any outstanding warrants against the
4 defendant.

5 (2) Written verification of any prior incidents where the
6 defendant has failed to make a court appearance.

7 (3) Written verification of the criminal record of the defendant.

8 (4) Written verification of the residence of the defendant during
9 the past year.

10 After the report is certified pursuant to this subdivision, it shall
11 be submitted to the court for review, prior to a hearing held
12 pursuant to Section 1319.

13 *(c) Whenever a court, sheriff, county probation department, or*
14 *other local governmental agency has employed an investigative*
15 *staff pursuant to subdivision (a), a pretrial investigation report*
16 *may be prepared in any case not involving a violent felony, as*
17 *described in subdivision (c) of Section 667.5, or a felony in*
18 *violation of subdivision (a) of Section 23153 of the Vehicle Code,*
19 *recommending whether the defendant should be released on his*
20 *or her own recognizance.*

21 *(d) Any report prepared pursuant to subdivision (b) or (c) shall*
22 *include all of the results of an evidence-based pretrial risk*
23 *assessment evaluating the defendant's probability of appearing*
24 *at trial and potential risk to public safety. "Evidence-based pretrial*
25 *risk assessment" is the objective, standardized analysis of*
26 *information about a pretrial defendant in a way that is consistent*
27 *with and guided by the best available scientific evidence and*
28 *professional knowledge that measures the risk of the defendant's*
29 *probability of appearing at trial and the potential risk to public*
30 *safety while pending case disposition.*

31 *(e) In preparing the report pursuant to subdivision (b) or (c),*
32 *the defendant shall not be interviewed about the facts and*
33 *circumstances of the current offense, and any information that a*
34 *defendant may provide shall not be included in the report. Any*
35 *information provided by the defendant shall be used solely for the*
36 *purposes of determining whether the defendant should be released*
37 *on his or her own recognizance or in setting the conditions of the*
38 *defendant's release or modifying a prior release order. The reports*
39 *may be filed as part of the case record. The reports are confidential*
40 *and shall be sealed upon receipt by the court and made available*

1 *only by court order, except that the reports shall be made available*
2 *upon request of any of the following:*

3 *(1) Any local or state criminal justice agency.*
4 *(2) Any agency to which the defendant is referred for assessment*
5 *or treatment.*

6 *(3) Counsel for the defendant who is the subject of the report.*

7 *(f) A court, sheriff, county probation department, or other local*
8 *governmental agency may, with the concurrence of the board of*
9 *supervisors, employ supervision staff to monitor the defendant's*
10 *compliance with the release conditions ordered by the court.*
11 *Supervision staff may do any of the following:*

12 *(1) Notify the defendant of court appearance obligations.*

13 *(2) Require the defendant to report periodically by mail,*
14 *telephone, or personal appearance to verify compliance with*
15 *release conditions.*

16 *(3) Monitor and assist the defendant with complying with release*
17 *conditions.*

18 *(4) Supervise a defendant placed on home detention, with or*
19 *without electronic monitoring, as a condition of release.*

20 *(5) Promptly report violations of release conditions to the court.*

21 *(6) Provide information to assist any law enforcement officer*
22 *with detaining a defendant supervised pursuant to this section and*
23 *for whom a bench warrant has been issued.*

24 *(e)*

25 *(g) The salaries of the staff are a proper charge against the*
26 *county.*

27 ~~SECTION 1. Section 3417 of the Penal Code is amended to~~
28 ~~read:~~

29 ~~3417. (a) Subject to reasonable rules and regulations adopted~~
30 ~~pursuant to Section 3414, the Department of Corrections and~~
31 ~~Rehabilitation shall admit to the program any applicant whose~~
32 ~~child was born prior to the receipt of the inmate by the department,~~
33 ~~whose child was born after the receipt of the inmate by the~~
34 ~~department, or who is pregnant, if all of the following requirements~~
35 ~~are met:~~

36 ~~(1) The applicant has a probable release or parole date with a~~
37 ~~maximum time to be served of six years, calculated after deduction~~
38 ~~of any possible good time credit.~~

39 ~~(2) The applicant was the primary caretaker of the infant prior~~
40 ~~to incarceration. "Primary caretaker" as used in this chapter means~~

1 a parent who has consistently assumed responsibility for the
2 housing, health, and safety of the child prior to incarceration. A
3 parent who, in the best interests of the child, has arranged for
4 temporary care for the child in the home of a relative or other
5 responsible adult shall not for that reason be excluded from the
6 category, "primary caretaker."

7 (3) The applicant had not been found to be an unfit parent in
8 any court proceeding. An inmate applicant whose child has been
9 declared a dependent of the juvenile court pursuant to Section 300
10 of the Welfare and Institutions Code shall be admitted to the
11 program only after the court has found that participation in the
12 program is in the child's best interest and that it meets the needs
13 of the parent and child pursuant to paragraph (3) of subdivision
14 (e) of Section 361.5 of the Welfare and Institutions Code. The fact
15 that an inmate applicant's child has been found to come within
16 Section 300 of the Welfare and Institutions Code shall not, in and
17 of itself, be grounds for denying the applicant the opportunity to
18 participate in the program.

19 (b) The Department of Corrections and Rehabilitation shall deny
20 placement in the community treatment program if it determines
21 that an inmate would pose an unreasonable risk to the public, or
22 if any one of the following factors exist, except in unusual
23 circumstances or if mitigating circumstances exist, including, but
24 not limited to, the remoteness in time of the commission of the
25 offense:

26 (1) The inmate has been convicted of any of the following:
27 (A) A sex offense listed in Section 667.6.
28 (B) A sex offense requiring registration pursuant to Section 290.
29 (C) A violent offense listed in subdivision (c) of Section 667.5.
30 (D) Arson as defined in Sections 450 to 455, inclusive.
31 (E) The unlawful sale or possession for sale, manufacture, or
32 transportation of controlled substances as defined in Chapter 6
33 (commencing with Section 11350) of Division 10, except Sections
34 11358 and 11359, of the Health and Safety Code, if large scale for
35 profit as defined by the department.

36 (2) There is probability the inmate may abscond from the
37 program as evidenced by any of the following:

38 (A) A conviction of escape, of aiding another person to escape,
39 or of an attempt to escape from a jail or prison.

1 ~~(B) The presence of an active detainer from a law enforcement~~
2 ~~agency, unless the detainer is based solely upon warrants issued~~
3 ~~for failure to appear on misdemeanor Vehicle Code violations.~~

4 ~~(3) It is probable the inmate's conduct in a community facility~~
5 ~~will be adverse to herself or other participants in the program, as~~
6 ~~determined by the Secretary of the Department of Corrections and~~
7 ~~Rehabilitation or as evidenced by any of the following:~~

8 ~~(A) The inmate's removal from a community program which~~
9 ~~resulted from violation of state laws, rules, or regulations governing~~
10 ~~Department of Corrections and Rehabilitation's inmates.~~

11 ~~(B) A finding of the inmate's guilt of a serious rule violation,~~
12 ~~as defined by the Secretary of the Department of Corrections and~~
13 ~~Rehabilitation, which resulted in a credit loss on one occasion of~~
14 ~~91 or more days or in a credit loss on more than one occasion of~~
15 ~~31 days or more and the credit has not been restored.~~

16 ~~(C) A current written opinion of a staff physician or psychiatrist~~
17 ~~that the inmate's medical or psychiatric condition is likely to cause~~
18 ~~an adverse effect upon the inmate or upon other persons if the~~
19 ~~inmate is placed in the program.~~

20 ~~(e) Nothing in this section shall be interpreted to limit the~~
21 ~~discretion of the Secretary of the Department of Corrections and~~
22 ~~Rehabilitation to deny or approve placement when subdivision (b)~~
23 ~~does not apply.~~

24 ~~(d) The Department of Corrections and Rehabilitation shall~~
25 ~~determine if the applicant meets the requirements of this section~~
26 ~~within 30 days of the parent's application to the program. The~~
27 ~~department shall establish an appeal procedure for the applicant~~
28 ~~to appeal an adverse decision by the department.~~